"The Government presents a different case. It denies that Hermis had a knife and even that Brown was acting in self defence. Notwithstanding the repeated threats of Hermis and intimations that one of the two would die at the next encounter, which seem hardly to be denied, of course it was possible for the jury to find that Brown had not sufficient reason to think that his life was in danger at that time, that he exceeded the limits of reasonable self defence or even that he was the attacking party. But upon the hypothesis to which the evidence gave much color, that Hermis began the attack, the instruction that we have stated was wrong."

Homicide—Self-Defense as Affected by Defendant's Being Engaged in Gambling.—In State *v.* Leak, 103 S. E. 549, the Supreme Court of South Carolina held that a defendant is not deprived of the right of self-defense on the theory of provoking the difficulty, because he was at the time engaged in gambling with deceased, who became provoked and attacked him on account of his winning his money.

The court said in part: "His Honor, the presiding judge, thus charged the jury: 'I charge you that in this case, if you should find that the defendant at the bar, Henry Leak, provided—if he was gambling and if he provoked—the fight with any other person, on account of any money won by gaming, he would be violating the law, and the plea of self-defense would not be available to him. I repeat, if you should find in this case that the defendant at the bar provoked the difficulty, on account of money won in a game of chance, or in gambling, the plea of self-defense would not be available to him. On the other hand, I charge you that if the difficulty was provoked by the deceased, or if it was not provoked by the defendant, on account of the game of chance, why then the plea of self-defense would be available to him, and, if it is proven to your satisfaction, as I shall charge you further, why you will give him the benefit of it. The law does not recognize the rights of gambling; on the contrary, gambling is unlawful in this state. * * *' It cannot be successfully contended, when a fight takes place during a gambling game, between the participants, that such a result was naturally and probably to be anticipated from the mere fact that gambling is unlawful. The causal connection between the unlawful act of gambling and the encounter arising during the progress of the game between the participants is too remote to destroy the right of self-defense. Furthermore, if the ruling of his Honor, the presiding judge, should be sustained, it would lead logically to the further untenable proposition that neither the assailant nor the party upon whom the assault was made would have the right to rely upon the plea of self-defense. The exception raising this question is sustained."

Payment—Agreement to Pay in Liberty Bonds.—In Nelson *v.* Rhem,

102 S. E. 395, 10 A. L. R. 832, the Supreme Court of North Carolina held that under an agreement to pay a specified amount "in Liberty Bonds," the buyer was required merely to deliver Liberty Bonds of the face value of such amount and not of the market value thereof.

The court said in part: "The contract of the defendant is to pay $42,500, 'payable one-half in cash and one-half in Liberty bonds,' and, if we were to adopt the construction of the plaintiff, we would strike out of the agreement of the parties the terms of payment, leaving an unqualified promise to pay $42,500, as this would be the effect if 'one-half in Liberty bonds,' means the market value of the bonds. The phrase 'one-half in Liberty bonds' means nothing, if not bonds on their face promising to pay $21,250, one-half the purchase money, and we have no right to change the contract, in the absence of allegation or proof of fraud or mistake, nor can we assume that the parties have inserted meaningless terms in their agreement.

"In Smith *v.* Dunlap, 12 Ill. 189, the contract was to pay $131,480.52 in the indebtedness of the State of Illinois, and the court says of the construction of the contract: 'Where the promisor undertakes to pay a certain number of dollars in specific articles, such as grain, cattle, or other commodities, he must deliver the property on the day named in the contract, or he becomes absolutely bound to pay the sum stated in money. The sum expressed in the obligation indicates the true amount of the debt; and the other provision is inserted for the benefit of the debtor, and relates exclusively to the mode of payment. If he does not avail himself of the privilege of discharging the debt in property, the obligation becomes a naked promise to pay the amount in money. But where the promisor agrees to pay a certain sum in bank notes, or other evidences of indebtedness, which purport on their face to represent dollars, and can be counted as such, the sum is expressed to indicate the number of dollars of the notes or evidence to be paid, and not the amount of the debt or consideration. The obligation is in fact but a promise to deliver so many dollars, numerically, of the securities described. If the debtor fails to deliver them according to the terms of the contract, he is responsible only for their real, not their nominal value. Their cash value is the true amount of the debt to be discharged. And beyond the damages directly resulting from the breach of contract, the creditor is not entitled to recover.' * * *

"'The contract in question falls directly within the latter definition. Is is an undertaking to pay a given number of dollars of the indebtedness of the state of Illinois. This indebtedness consists of obligations issued by the state, for the payment of specified sums of money to its creditors. The amount in dollars is expressed on the face of the instruments, and can be at once ascertained by inspection.' * * *

"'In Clay *v.* Houston's Adm'rs, 1 Bidd. [Ky.] 461, the expression

in a note, "thirty pounds in militia certificates," was construed to mean that number of pounds in certificate as specified on their face, and not an amount of certificates equal in value to thirty pounds in specie. Anderson *v.* Ewing, 3 Litt. [Ky.] 245, a note for the payment of "eight hundred dollars, on or before the first day of September, 1920, in such bank notes as are received in deposit at that time in the Hopkinsville Branch Bank," was held to be a contract to pay 800 paper dollars of the description mentioned. The court said: "It is true, an instrument drawn, stipulating the payment of a certain number of dollars in cattle, wheat, or other commodities, is construed to mean so much of these articles as will amount to that sum in specie. But the reason of this is evident. The commodities themselves cannot be counted by dollars, as the name is never applied to them. But this is not the case with blank notes. They engage to pay so many dollars, and are numerically calculated by the numbers they express; so that the expression 'eight hundred dollars in blank paper' is universally understood to mean that much money, when the numbers expressed on the face of the note are added together, and not as including so many more superadded, as will make them equal to eight hundred dollars in specie." In Phelps *v.* Riley, 3 Conn. 266, a note for "eighty-eight dollars in current bank notes, such as pass in Norfolk between man and man," was decided to be a contract to pay bank notes of the kind described, to the nominal amount of $88. In Robinson *v.* Noble's Adm'rs, 8 Pet. 181 [8 L. Ed. 910], in an action on an agreement to pay freight at the rate of $1.50 per barrel, "in paper of the Miami Exporting Company, or its equivalent," the court held that the specie value of the paper, when the payment should have been made, was the proper measure of damages. In Hixon *v.* Hixon, 7 Humph. [Tenn.] 33, a note for "one hundred dollars, in Georgia, or Alabama, or Tennessee bank-notes, or notes on any good man," was decided to be an obligation for the payment of that many dollars for the notes specified. In Gordon *v.* Parker, 2 Smedes & M. [Miss.] 485, a note for "five thousand dollars, payable in Brandon money," was determined to be a contract to pay that number of dollars of the kind of money described. In Dillard *v.* Evans, 4 Pike [4 Ark.] 175, the court held a note payable in the "common currency of Arkansas" to be a contract to pay so many dollars of the bank paper then current in the state.'

"Also in Easton *v.* Hyde, 13 Minn. 90 (Gil. 83), speaking of a similar contract: 'But a dollar is the measure of the value of United States bonds, so that the expression, payable "in United States bonds," is as universally and clearly understood as would be the expression payable "in bank bills," "in United States Treasury notes," or "in gold coin." If these parties had intended that the bonds should be received at any other than their nominal value, they doubtless would have so provided in the contract.' "